HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.8871 of 2004

Between:

Smt. Fathimunnisa Begum w/o. late Shaik Noor Ahmed,

Muslim, aged 56 years, residing at Door No.40-20-35,

Pragatinagar, Benz Circle, Vijayawada 520 010. … Petitioner

And

Andhra Bank, Head Office at 5-9-11,

Dr.Pattabhi Bhavan, Saifabad,

Hyderabad, Andhra Pradesh

And one of its Branches at Gandhi Nagar,

Vijayawada – 520 003 & two others.

… Respondents

:: ORDER::

Counsel for the Petitioner: Sri V.S.R. Anjaneyulu

Counsel for Respondent No.1 : Sri A. Krishnam Raju

Counsel for Respondents No.2 & 3: Sri N. Ram Mohan Rao

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February 01, 2006

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Per G.S. Singhvi, CJ

This is a petition for quashing orders dated 11-09-2003 and 24-3-2004 passed by Debts Recovery Tribunal, Visakhapatnam (for short 'the Tribunal') and Debts Recovery Appellate Tribunal, Chennai (for short 'the Appellate Tribunal') respectively.

The facts necessary for deciding the writ petition are as under:

i. Respondent No.1, Andhra Bank (for short 'the Bank') filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the Act') for recovery of Rs.14,82,242/- from respondents 2 and 3 and appellant along with interest @ 19% per annum compounded quarterly. In the application, it was averred that for his working capital requirement of business, Sri A. Davidu Reddy, Proprietor of Sri Avani Steel Corporation (respondent No.2) had approached the Bank in August 1999 for a secured overdraft of Rs.10 lakhs. Sri Madugula Krishna Reddy (respondent No.3) gave guarantee and petitioner

Smt.Fathimunnisa Begum offered her residential building bearing No.40-20-35 in Prajashakthi Nagar, Labbipet, Vijayawada as security. The petitioner deposited title deed of the residential building with an intention to create equitable mortgage. She confirmed the same vide letter dated 3-9-1999. It was further averred that respondent No.2 had failed to repay the amount despite reminders and registered notices. The application of the Bank was registered as O.A.No.189 of 2002. The petitioner, who was impleaded as one of the non-applicants was served with summon issued by the Tribunal. On 28-6-2002, Sri T. Jagadeeswar Rao, Advocate filed vakalath on behalf of the petitioner. At his request, the case was adjourned on

28-6-2002, 13-8-2002, 26-9-2002 and 7-11-2002 for the purpose of filing written statement, but the written statement was not filed. On 7.12.2002, no one appeared on behalf of the petitioner. Notwithstanding this, the Tribunal adjourned the case to 4.12.2002. On that date also, no one appeared for the petitioner. Therefore, an order for ex parte proceedings was passed and the case was adjourned to 30-1-2003 for the evidence of the Bank. The evidence of the bank was finally taken on 19.2.2003. Thereafter, the case was fixed for arguments. By an order dated

24-2-2003 the Tribunal allowed the application with costs holding that the non-applicants were jointly and severally liable to pay Rs.14,82,242/- with interest @ 19% per annum with quarterly rests from the date of application. The Tribunal also awarded simple interest from the date of order till the date of realization. The non-applicants were allowed three months time to pay the debt and it was ordained that in case of default, the properties mentioned in Schedule-A shall be sold for realization of the amount due to the Bank.

ii. After 30 days of passing of the aforementioned order, an application was filed on behalf of the petitioner for setting aside order and decree dated 24-2-2003. The same was registered as M.A.No.27 of 2003. In the affidavit filed by her in support of the application, the petitioner

averred that due to old age and bad health condition, she could not come to Visakhapatnam to contact her advocate for giving instructions to prepare written statement. She pleaded that non-filing of written statement was neither willful nor deliberate. It was also pleaded that she had neither offered to give the residential building as security nor deposited the title deed with the Bank.

iii. In the counter filed on behalf of the Bank, it was pleaded that the application filed by the petitioner was not maintainable because she had failed to show any cause for non-appearance on 4-12-2002.

iv. On a consideration of the pleadings of the parties and record of the case, the Tribunal dismissed the application of the petitioner. Paragraphs 4 and 5 of order dated 11.9.2003, which contain detailed enumeration of facts and the reasons assigned by the Tribunal for not accepting the petitioner's plea read as under:

"4. It must be stated that OA was filed on
2-5-2002. Summons were ordered on 8-5-2002 and posted to 28-6-2002 on which date one Sri T. Jagadeeshwar Rao filed vakalat for D3-petitioner. Time was given for filing written statement and posted to 13-8-2002, 26-9-2002, finally to
7-11-2002 and as last chance to 4-12-2002. On
4-12-2002, Sri Jagadeshwar Rao was absent. Written statement was not filed. Therefore, D3 was called absent and set ex parte and posted to
30-1-2003 for applicant's evidence. From there it was adjourned to 11-2-2003 and to 19-2-2003. On
19-2-2003, affidavit and documents filed. Ex.A.1 to 13 marked and the matter was heard and orders were passed on 24-2-2003, allowing OA, as all the defendants were ex parte. In spite of giving number of chances for about 6 months, D3 never bothered to file written statement. Her advocate was only taking the time, and not filed written statement. D3 never appeared in the Tribunal. The averment in the affidavit of the petitioner that on 7-11-2002 she was set ex parte, as written statement was not filed is false. Because from 7-11-2002, it was posted to 4-12-2002 as last chance for filing written statement. She was set ex parte only on
4-12-2002 but not on 7-11-2002. Even after that the matter was adjourned nearly three times for applicant's evidence. Even before 19-2-2003 when affidavit and documents filed or at least on that date, no petition has been filed for petitioner to set aside the ex parte order. As per Section 19 (4), summons shall be issued requiring defendant to

show cause within 30 days of the service of summons as to why the relief prayed for could not be granted. Sub-section 5 of Section 19 further says that the defendants shall at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence. In this case, summons were ordered on 8-5-2002 and posted to 28-6-2002 on which date vakalat filed for D3. Sufficient time was given to D3 till
4-12-2002 by adjourning the case four times. She was not satisfied with the time given. But, still tried to drag on the proceedings. On 4-12-2002, no representation has been made for D3 and she and her advocate were absent. Therefore, D3 was called absent and set ex parte. I do not find any valid grounds for setting aside the ex parte decree passed on 24-4-2003. If according to petitioner that she was informed that the case was posted to 7-11-2002 for filing written statement, then what was she doing from 28-6-2002 to 7-11-2002, is not explained satisfactorily. In my opinion, there are no valid, sufficient and tenable grounds for setting aside the ex parte decree. If really she wants to put forward that she did not give any property as security, then she should have taken care for filing written statement even before 4-12-2002.

5. Originally the present MA.No.27 of 2003 appears to have been filed by Sri T.V.S. Rao on behalf of petitioner, but I do not find any vakalat of Sri Rao. On the other hand, on 17-7-2003, MA.No.53 of 2003 was filed by Sri S.S.Sharma, Advocate requesting for stay of proceedings in RP.No.35 of 2003 till disposal of MA.No.29 of 2003 in OA.No.189 of 2002. This MA.No.29 of 2003 is not filed by petitioner. She filed MA.No.27 of 2003. However, on 21-7-2003, I have granted interim stay on the condition of petitioner depositing Rs.6 lakhs into the Tribunal on or before 27-8-2003 and in default, the petition shall stand dismissed. On 27-8-2003, Sri S.S. Sharma, Advocate stated that his client did not turn up and he does not know whether the conditional order dt.21-7-2003 was complied or not. As there was nothing to show that the conditional order was complied, the petitioner was called absent. It was self-contained order. Therefore, it was dismissed. Therefore, when there are so many lapses on the part of the petitioner, she does not deserve any leniency from this Tribunal. In OA itself it was mentioned very clearly that the present petitioner has deposited her title deeds in respect of “A” Schedule house property on 30-8-99 and she also confirmed the same by letter dt.3-9-99. Therefore, now at the time when Recovery Certificate being executed to say that she never gave any property as security appears to be not correct. I do not find any bona fides in filing this petition. In fact that she has only given security for the loan obtained by D1 and 2. I do not find any valid grounds for setting aside the
ex parte decree.”

v. The petitioner challenged the aforementioned order by filing an appeal under Section 20 of the Act. She reiterated the plea that her absence on 7-11-2002 was not deliberate and the Tribunal committed a grave illegality by ordering ex parte proceedings. The Appellate Tribunal, vide its order dated 24-3-2004 dismissed the appeal by making the following observations:

> "4. On a perusal of the entire records it is clearly seen that sufficient opportunity was given to the appellant. The appellant only did not choose to file the written statement and she was called absent and set ex parte. She appeared through Counsel. She and her Counsel had every knowledge about the posting of the case. So it cannot be stated that she was not at all aware of the proceedings. Further, the borrower the 1st defendant, also filed MA-29/2003 for setting aside the ex parte order. In that MA-29/2003 the appellant sought for interim stay and the PO, DRT, granted interim stay on condition of the 3rd defendant the appellant depositing Rs.6 lakhs into the Tribunal on or before 27-8-2003 and in default the petition shall stand dismissed. On 27-8-2003, her Counsel stated that the client did not turn up and he does not know whether the conditional order dated 21-7-2003 was complied or not. So, the PO, DRT has stated that there was nothing to show that the conditional order was complied and the petitioner the appellant was called absent. So, even after that opportunity was given the appellant did not chose to comply with the conditional order and the appellant did not file the written statement in time and in fact she was dragging on the matter without filing the written statement in spite of sufficient opportunity given. The PO, DRT rightly dismissed that petition. I see no ground to set aside the ex parte order passed by the PO, DRT, Visakhapatnam."

Sri V.S.R. Anjaneyulu argued that the Tribunal as well as the Appellate Tribunal committed serious illegality by refusing to set aside ex parte order and decree despite the fact that the petitioner had offered cogent explanation for her absence on

7-11-2002. He referred to affidavit dated 25-3-2003 filed by the petitioner in support of her prayer for setting aside ex parte order and decree to show that she could not give instructions to her advocate due to old age and ill-health and argued that without even adverting to this ground, the Tribunal arbitrarily rejected her prayer and

that too by taking into consideration a wholly irrelevant factor i.e., non-filing of written statement till
7-11-2002. Sri Anjaneyulu then argued that the decree passed by the Tribunal is liable to be set aside because order dated
24-2-2003 does not contain any discussion on the factual and legal aspect of the Bank's entitlement to recover the amount from the petitioner. He vehemently submitted that the petitioner had not executed any document for mortgaging her property in favour of the Bank and respondent No.2 had managed to secure overdraft facility in connivance with the Bank Officers by producing forged document. Learned counsel further submitted that the petitioner is in no way related to respondent No.2 and, therefore, there was no occasion for her to mortgage the property at his instance. In support of his arguments, learned counsel relied on the judgments of the Supreme Court in **Balraj Taneja v. Sunil Madan**, **G.P. Srivastava v. R.K.Raizada** and of this Court in **Aziz Ahmed v. I.A. Patel**, **Satyanarayana v. Wakf Board**, **Berger Paints India Ltd., Kolkata v. Syed Vicaruddin**, and **Yelka Ram Reddy and others v. Kancharla Indira**.

Sri A. Krishnam Raju supported the orders under challenge and argued that the Tribunal did not commit any illegality by refusing to set aside order and decree dated
24-2-2003. Sri Raju pointed out that even though written statement was not filed on behalf of the petitioner till
7-11-2002 and no one appeared on her behalf on that date, the Tribunal adjourned the case to 4-12-2002, on which date also no one appeared for the petitioner leaving the Tribunal with no option but to proceed ex parte. Learned counsel argued that the failure of the petitioner and her advocate to appear on
7-11-2002 and 4-12-2002 constituted a valid ground for passing an order for ex parte proceedings and the Tribunal did not commit any illegality by doing so. Sri Raju then pointed out that except making a bald statement in para 2 of affidavit dated 25-3-2003 that due to old age and bad health condition she could not come to Visakhapatnam to contact her advocate for giving necessary instructions to prepare written statement, the petitioner did not produce any evidence to show that she was ailing and, on that account, she could not contact her advocate. Learned counsel emphasized that even before this Court, the petitioner has not produced any document to substantiate her assertion regarding illness and consequential inability

to contact the advocate for the purpose of giving instructions. Sri Raju argued that though the Courts have given liberal interpretation to the expression “sufficient cause”, an ex parte decree cannot be set aside merely for asking and the Tribunal did not commit any patent illegality by refusing to entertain the prayer of the petitioner because she did not produce any tangible evidence to justify her absence. To meet the argument of Sri Anjaneyulu that the order and decree passed by the Tribunal is bereft of reasons and does not show application of mind to the material brought on record, Sri Raju pointed out that the Tribunal not only referred to the factual background of the Bank’s claim, but also referred to the evidence produced by it in the form of affidavit and documents to show that the borrower had failed to pay the debt and submitted that the order and decree dated 11.9.2003 cannot be held as vitiated due to non-application of mind. Learned counsel then pointed out that the petitioner had not only deposited the title deed with an intention to create equitable mortgage, but confirmed the same vide letter dated 3-9-1999 and argued that the order and decree passed by the Tribunal cannot be held as vitiated on the ground that the same is based on forged document.

We have given serious thought to the respective arguments and carefully scanned the record.

The first question which arises for determination is whether order dated 11-9-2003 passed by the Tribunal refusing to set aside the ex parte order and decree is vitiated by any jurisdictional infirmity or error of law apparent on the face of the record. A brief recapitulation of the facts would show that the Bank had filed application under Section 19 of the Act for recovery of Rs.14,82,242/- by alleging that respondent No.2 had failed to repay the amount due from him. The petitioner was impleaded as party because she had mortgaged her property as security for repayment of loan and confirmed this transaction vide her letter dated 3.9.1999. Notice of the application filed by the Bank was duly served on the petitioner, the borrower and the guarantor, but neither of them filed written statement. Sri T. Jagadeeswara Rao, advocate filed vakalath on behalf of the petitioner on 28-6-2002. Thereafter, the case was adjourned to 13-8-2002, 26-9-2002 and 7-11-2002 for the purpose of filing written statement, but the needful was not done. On 7.11.2002, neither the petitioner nor her advocate appeared before the Tribunal. Notwithstanding this, the case was adjourned to 4.12.2002. Even then the petitioner neither filed the written statement nor appeared in person or through her advocate.

Therefore, the Tribunal passed an order for ex parte proceedings and adjourned the case to 30-1-2003 for the evidence of the Bank. The Tribunal granted two more adjournments to the Bank to adduce evidence. On 19-2-2003, representative of the Bank produced evidence in the form of affidavit and documents marked as Exs.A.1 to 13. After considering the uncontroverted averments contained in the application and the evidence produced by it, the Tribunal decreed the application of the Bank. The petitioner applied for restoration by asserting that on account of old age and bad health, she could not instruct her advocate. The Tribunal did not accept her plea and dismissed the application by observing that she has failed to show sufficient cause. The Appellate Tribunal confirmed that order.

In our opinion, it is extremely difficult, if not impossible to believe that at the age of 58 years, the petitioner could be treated as old, but, even if that be so, in the absence of any detail regarding her illness and supportive evidence in the form of medical certificate, the Tribunal was fully justified in declining her prayer for setting aside ex parte decree. The fact that the petitioner and her advocate did not even bother to find out the status of the case on and after 7-11-2002 goes a long way to show that the explanation given by the petitioner for
non-appearance on 7-11-2002 and, thereafter, was far from satisfactory. In the course of hearing, we repeatedly asked Sri Anjaneyulu, learned counsel for the petitioner to produce evidence to substantiate his client's plea regarding illness which prevented her from contacting advocate for the purpose of filing written statement, but he could not draw our attention to any such document. He could not even give description of the ailment, though he half-heartedly stated that she was suffering from heart problem. If the petitioner had been suffering from a serious ailment like heart problem, she would have given the particulars of illness in the affidavit filed in support of the application for setting aside ex parte decree and produced medical certificate. However, the fact of the matter is that she neither gave the particulars of her illness nor any evidence was produced to substantiate the same. Therefore, the view taken by the Tribunal that the petitioner has failed to show sufficient cause for her non-appearance on 7-11-2002 and 4-12-2002 cannot be termed as patently erroneous and we do not find any justification to interfere with order dated 11-9-2003, more so because, even before this Court, no material has been produced to substantiate the assertion contained in the affidavit of the petitioner dated 25-3-2003 and no iota of explanation has been given as to why she and her advocate did not appear before the Tribunal till the passing of the decree.

The petitioner's challenge to the order of the Appellate Tribunal is wholly misconceived. The Appellate Tribunal examined the entire record and held that the petitioner had failed to avail the opportunity given to her to file written statement. The Appellate Tribunal noted that the petitioner had appeared through an advocate and knew about the proceedings of the case, but no effort was made to file written statement for five months and no one appeared on her behalf on 7-11-2002 and thereafter. In the opinion of the Appellate Tribunal, the explanation given by the petitioner for her failure to appear on
7-11-2002 was not at all satisfactory and we do not find any valid reason to disagree with it.

We may now advert to the judgments on which reliance has been placed by learned counsel for the petitioner. In **G.P.Srivastava v. R.K. Raizada**[2] (supra), the Supreme Court considered the question whether the negligence of the defendant earlier to the date on which order for ex parte proceedings was passed can be taken into consideration for deciding an application filed under Order 9 Rule 13 and answered the same in negative. The facts of that case were that the suit filed against the appellant for ejectment and damages was decreed ex parte on 10-3-1983. He filed application dated 7-4-1983 for setting aside the ex parte judgment and decree. The same was dismissed on 14-5-1985. Revision filed against that order was dismissed by the High Court on 23-9-1999 by observing that the appellant had failed to establish any just or sufficient cause for his non-appearance on the date fixed when the ex parte proceedings were initiated against him. Their Lordships' of the Supreme Court noticed that the appellant who was working as Assistant Engineer in the Irrigation Department had to remain at the site in the interest of public and due to illness he could not come back to Lucknow till 11-2-1983 which prevented him from appearing in the trial court on 10-3-1983. On the particular day, young nephew of the counsel for the appellant met with an accident and died and, on that account, the counsel also could not appear before the Court. In support of his plea of illness, the appellant produced medical certificate, but the same was discarded by the trial court with the observation that it had been obtained from a private doctor and not from a government doctor. The High Court also did not accept the plea of the appellant and dismissed the revision petition by noticing his previous conduct. While reversing the order of the High Court, the Supreme Court observed as under:

"Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

Their Lordships of the Supreme Court observed that non-appearance of the appellant was due to the fact that he was ill and his advocate could not appear due to the sudden demise of his nephew and both these grounds constituted "sufficient cause" within the meaning of Order 9 Rule 13 of the Code of Civil Procedure.

In **Yelka Ram Reddy v. Kancherla Indira**[6] (supra), a learned Single Judge of this Court reiterated the same principle in the following words:

"The Trial Court failed to maintain the distinction between the lapse on the part of the respondents to file the written statement on the one hand and not being present in the Court when the matter was taken up on the other hand. While the lapse as regards first aspect is to result in forfeiture of the right to file written statement, the lapse on the other aspect would result in setting the ex parte decree. The application under Order IX Rule 13 C.P.C., deals with the 2nd aspect alone. It is not as if the Trial Court has passed any order forfeiting the right of the petitioner to file the written statement. While considering the application under Order IX Rule 13 C.P.C., the Trial Court

was required to examine as to whether there was any deliberate omission or lapse on the part of the respondents in attending the Court on the day on which the applicant was set ex parte or and ex parte decree was passed. Instead, it proceeded to discuss the matter as though it as considering an application under Section 5 of the Limitation Act or an application to set aside the order forfeiting right to file written statement.

Time and again this Court held that while considering the application under Order IX Rule 13 C.P.C., the Court has to examine the justification, or the absence of it, on the part of the applicant in remaining absent on the day on which the ex parte order was passed. The conduct of the parties at other stages of proceedings would hardly be of any relevance in such cases. It was in this context, that the lower appellate Court had corrected the mistakes committed by the Trial Court."

The proposition laid down in the aforementioned decisions is unexceptionable, but the same does not support the cause of the petitioner. At the cost of repetition, we deem it proper to observe that the Tribunal and the Appellate Tribunal directed their attention to the core issue namely the sufficiency of cause for the petitioner's absence on 7-11-2002 and 4-12-2002 and her failure to file written statement and both recorded a concurring finding that the cause shown by the petitioner was not sufficient. In its order, the Tribunal did make a mention of the various adjournments granted between 28-6-2002 and 7-11-2002, but did not rest its conclusion on the premise that the petitioner had been negligent in prosecuting her cause. Rather, it pointedly considered the issue whether there was any justification for the absence of the petitioner and her counsel on
7.11.2002 and 4-12-2002 and concluded that there was no justifiable cause for their non-appearance on the appointed dates. The Appellate Tribunal too considered the issue in a correct perspective and agreed with the Tribunal. Learned counsel for the petitioner could not show that the reasons assigned by the Tribunal and the Appellate Tribunal are irrelevant or extraneous and the concurrent finding recorded by them is based on patently incorrect appreciation of evidence. Therefore, merely because on a re-evaluation of the entire material, this Court may form a different opinion cannot justify issuance of a writ of certiorari.

The next question which merits consideration is whether order dated 24-2-2003 passed by the Tribunal is liable to be set aside on the ground that the same does not constitute a 'judgment' within the meaning of Section 2 (9) read with Order 20 Rule 4 (2).

At the outset, we deem it necessary to mention that the petitioner has not prayed for quashing order dated 24-2-2003 passed in O.A.No.189 of 2002 and, therefore, the argument advanced by the learned counsel for assailing that order is liable to be summarily rejected. In our considered view, in the absence of a specific prayer by the petitioner to that effect, this Court cannot invalidate order and decree dated 24-2-2003 passed by the Tribunal on the ground that the same does not satisfy the legal requirements of a judgment.

De hors the aforementioned conclusion, we are convinced that the order and decree passed by the Tribunal cannot be nullified on the ground that the same does not satisfy the requirement of a judgment. A reading of that order shows that in paragraph 2, the Tribunal noticed the background facts which constituted the foundation of the Bank's claim. In the third paragraph of its order, the Tribunal briefly referred to the proceedings of various dates including the fact that evidence was produced on behalf of the Bank on 19-2-2003, which comprised of an affidavit and documents marked as Exs.A.1 to A.13. In 4th paragraph, the Tribunal referred to the contents of the original application, affidavit and documents produced on behalf of the Bank and concluded that the defendants had committed default in repayment of the loan. Therefore, it cannot be said that the Tribunal decreed the application of the Bank without application of mind and without considering the evidence brought on record or that order dated 24.2.2003 passed by it does not satisfy the requirement of a judgment as defined in Section 2(9) of the Code of Civil Procedure.

In this context, it is apposite to mention that the proceedings of the Tribunal are not governed by the Code of Civil Procedure. Section 22 (1) of the Act declares that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice and they shall have powers to regulate their own procedure. Sub-section (2) of Section 22 empowers the Tribunal and the Appellate Tribunal to exercise powers under the Code of Civil Procedure for summoning and enforcing the attendance of any person and examining him in oath; requiring the discovery and production of documents; receiving evidence of affidavits; issuing commissions for the examination of witnesses or documents; reviewing its decisions; dismissing an application for default or deciding it ex parte; setting aside any order of dismissal of any application for default or any order passed ex parte. Sub-section (3) of Section

22 lays down that proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of Indian Penal Code and for the purposes of Section 196 IPC, the Tribunal or Appellate Tribunal shall be deemed to be a Civil Court.

The aforesaid analysis of Section 22 leaves no manner of doubt that the Tribunal and the Appellate Tribunal are not bound to follow the procedure contained in the Code of Civil Procedure and they are entitled to regulate their own procedure subject to the condition that the same shall be in consonance with the principles of natural justice. Although, in respect of some matters, the Tribunal and the Appellate Tribunal can exercise the powers of a Civil Court, but they are not bound by the procedure laid down under the Code of Civil Procedure.

In the present case, the Tribunal allowed the application of the Bank and passed decree after considering the pleadings of the original application and evidence produced in the form of affidavit and documents. Therefore, it is not possible to decry order dated 24-2-2003 by declaring that the same is vitiated by an error of law or due to non-compliance of the provisions contained in Section 2 (9) read with Order 20 Rule 4 (2) of the Code of Civil Procedure.

The two judgments relied by the learned counsel for the petitioner in support of his argument that the order passed by the Tribunal does not satisfy the requirement of a judgment, are clearly distinguishable. In **Balraj Taneja v. Sunil Madan**[1] (supra), their Lordships of the Supreme Court noted that Delhi High Court decreed the suit simply because the defendants had failed to file written statement. Their Lordships reproduced the judgment dated 10-2-1997 recorded by Delhi High Court and set aside the same by observing that it does not satisfy the requirement of a judgment as defined in Section 2 (9) of the Code of Civil Procedure. Paragraphs 35, 36 and 39 of that decision which contain reproduction of the judgment of Delhi High Court and the reasons recorded by the Supreme Court are reproduced below:

> "**35.** This suit has been decreed by the Delhi High Court by the following judgment:
>
> "*Suit No. 1124 of 1996 & IA No. 4303 of 1996*
>
> On 20-9-1996, Mr Lalit Kumar, learned counsel for Defendants 1 to 3 sought time to file written statement and reply. Time was granted but the

written statement and reply have not been filed. On 22-1-1997, Mr. Aseem Mohar, counsel for defendant appeared and sought time to file vakalatnama and written statement/reply and the matter had been adjourned to this date. Today Mr Kamal Mehta putting in appearance on behalf of Defendants 2 and 3 represents that Mr Rajiv Nayar has been engaged by the second and third defendants this morning and he seeks time to file written statement/reply.

The defendants are adopting this tactic only to protract the proceedings and have not filed the written statement and reply to the application in spite of sufficient opportunity having been given.

Accordingly, the suit is decreed for specific performance in favour of the plaintiff and against the defendants with the directions to the plaintiff to deposit the balance amount of Rs 3,00,000 (Rupees three lakhs) in this Court within six weeks from today. If the amount is deposited within six weeks, it will be open for the plaintiff to apply for the appointment of a Commissioner for the execution of the sale deed. The defendants are also directed to pay the cost of the suit.

Dated sd/-

10-2-1997 Judge."

36. A perusal of the above judgment will indicate that the suit had been decreed only because of the failure of the defendants in filing the written statement. This exhibits the annoyance of the Court which is natural as no court would allow the proceedings to be delayed or procrastinated. But this should not disturb the judicial composure which unfortunately is apparent in the instant case as the judgment neither sets out the facts of the case nor does it record the process of reasoning by which the Court felt that the case of the plaintiff was true and stood proved.

39. Unfortunately, the High Court did not consider this fact and proceeded almost blindly to pass a decree in favour of the plaintiff merely because written statement had not been filed in the case. Learned Single Judge, who passed the decree, did not consider any fact other than the conduct of the defendants in seeking adjournments of the case for purposes of filing written statement. So also, the Division Bench did not consider any fact other than the fact that the defendants had been trying to prolong the proceedings by seeking adjournments and, that too, by changing their counsel. The Division Bench also took into consideration the fact that the appeal filed by the defendants against the decree passed by the Single Judge was beyond time which again indicated their negligence. No other fact was taken into consideration and the decree passed by the Single Judge was affirmed."

In **Berger Paints India Ltd., Kolkata v. Syed Vicaruddin**[5] (supra), a learned Single Judge held that even when a case is decided ex parte, the trial Court is under an obligation to write judgment in conformity with the provisions of the Code or at least set out reasoning by which the controversy is resolved.

In our opinion, the ratio of the aforementioned judgments cannot be made basis for nullifying order dated 24-2-2003 passed by the Tribunal in O.A.No.189 of 2002 because

i. the proceedings of the Tribunal are governed by Section 22 of the Act which specifically declare that the Tribunal and the Appellate Tribunal shall not be governed by the provisions of the Code of Civil Procedure;

ii. the order of the Tribunal is in consonance with the principles of natural justice and reflects proper application of mind to the pleadings contained in the original application filed by the Bank and evidence produced by it.

Before concluding, we deem it necessary to reiterate that in exercise of power under Article 226 of the Constitution of India, the High Court does not sit in appeal over the judgment and orders passed by the judicial and quasi-judicial authorities / bodies. The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. Such writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals or quasi-judicial authorities. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a

detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

In **Syed Yakoob v. K.S. Radhakrishnan and others** the Constitution Bench of the Supreme Court considered the scope of the High Court's power to issue the writ of certiorari and laid down the following propositions:

> "A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals: these are cases where orders are passed by inferior courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
>
> The jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.
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> A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the

relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court."

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others** their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others** the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

"The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

The proposition laid down in **Sayed Yakoob**[7] (supra) has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**

In **Surya Dev Rai v. Ram Chander Rai** the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following

propositions:

i. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above-said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there-against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii. The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii. In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supercession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv. The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from

> correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

The argument of the learned counsel for the petitioner that the order and decree passed by the Tribunal should be declared as vitiated by fraud because the same is based on forged document is liable to be rejected because,

> (i) order and decree dated 24-2-2003 is not under challenge in this petition, and
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> (ii) the question whether order and decree passed by the Tribunal is vitiated by fraud involve detailed investigation into the issues of facts, and in exercise of power under Article 226 of the Constitution we are not inclined to determine these issues more so because no factual foundation has been laid for such a plea.

In the result, the writ petition is dismissed. However, the petitioner is left free to avail appropriate legal remedy by showing that the order and decree dated 24-2-2003 is vitiated by fraud. No costs.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

February 01, 2006

Svs/vtv